

Remarks

Amendments to the Claims

Claims 1-31 were pending in this application, and subject to a Restriction Requirement.

Claims 22-28 are canceled herein, without prejudice, in response to the Restriction Requirement. Applicants expressly reserve the right to prosecute claims 22-28 in a divisional application.

New claims 32-34 are added herein. Support for new claims 32-34 can be found throughout the specification, for example at page 25, lines 17-19 and page 24, lines 5-11.

No new matter is introduced by these amendments. To the extent that any of the claims are viewed to be narrowed by the amendments made herein, Applicants reserve the right to pursue protection of the broader scope of the subject matter in this or a later-filed application.

After entry of this amendment, **Claims 1-21 and 29-34 are pending in the application.** Consideration of the pending claims is requested.

Restriction Requirement

In response to the restriction requirement, Applicants provisionally elect, with traverse, the claims of Group I, directed to a method of treating a subject with multiple sclerosis (claims 1-21 and 29-31, with traverse).

The MPEP clearly states (see MPEP 803, second paragraph):

If the search of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. [MPEP 803, emphasis supplied]

Applicants submit that it would not be an undue burden on the Examiner to search the subject matter of Group I (drawn to a method of treating a subject with multiple sclerosis) with the subject matter of Group II (drawn to a method of treating a subject of multiple sclerosis).

Group I (claims 1-21 and 29-31) is drawn to a method of treating a subject with multiple sclerosis using an IL-2 receptor antagonist is an antibody. Group II (claims 1-14) drawn to a

method of treating a subject with multiple sclerosis using an IL-2 receptor antagonist is an antibody. Applicants note that claim 3-9 are directed to specific antibodies and their administration. Thus, the Applicants believe that claims 3-9 should only be included in Group I; claims 3-9 should not be included in Group II.

The M.P.E.P. § 806.05(j) states:

To support a requirement for restriction between two or more related product inventions, or between two or more related process inventions, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status in the art, or field of search

Thus, a reasonable basis for a finding of two-way distinctness can be based on field of search, classification, or status in the art. As discussed above, claims 1-2 and 10-14 should be included in both Groups I and II. A search of the subject matter of claims 1-2 and 10-14, specifically encompassing methods of treating a subject with an IL-2 receptor antagonist, would result in a search of the subject matter of Group 1 (the use of IL-2 receptor antagonist that is an antibody) and the subject matter of Group 1 (the use of an IL-2 receptor antagonist that is not an antibody). Thus, the field of search for claims 1-2 and 10-14 (as performed for the subject matter of Group I) should identify relevant prior art for the subject matter of Groups I and Group II.

The M.P.E.P. provides that the classification of the claims can be relied on for a reasonable basis for a restriction. However, Applicants submit that such a finding has not been demonstrated for the claims of Group I and the claims of Group II. Applicants do not understand how one group of claims, directed to a method of treating multiple sclerosis can be classified as class 424, while a second group of claims, also directed to a method of treating multiple sclerosis, can be classified in an "undisclosed" class. Applicants believe that the claims of Groups I and II should be classified in class 424.

With regard to the "status of the art" Applicants believe that one of skill in the art can readily identify an IL-2 receptor antagonist of use, whether or not the antagonist is an antibody or another compound. Thus, Applicants do not believe that the status in the art is a reasonable basis for restriction.

In the unlikely event that the U.S. PTO maintains that there is a reasonable basis for the restriction of the claims of Group I and Group II, Applicants request that this division of claims be reconsidered as a requirement for an election of species (see the M.P.E.P. § 808.01(a)). Applicants submit that as claims 1-2 and 10-14 are classified in both Groups I and II as these claims are broadly directed to the use of an IL-2 receptor antagonist to treat multiple sclerosis. Thus, there is clear basis for a finding that claims 1-2 and 10-14 are generic. In addition, Applicants submit that there is a clear relationship between an antagonist of the IL-2 receptor that is an antibody, and an antagonist of the IL-2 receptor that is not an antibody: they both inhibit the function of the IL-2 receptor. If an election of species is required (and Applicants do not concede in any way that such a requirement is proper), then the Applicants elect an antagonist of the IL-2 receptor that is an antibody.

Reconsideration and withdrawal of the restriction requirement is respectfully requested.

Conclusion


It is respectfully submitted that the amended claims submitted herewith should all be recombined and considered in the current case, and as such they are in a condition for substantive examination. If an additional restriction requirement is asserted, or if the present restriction requirement is modified in any way, the Examiner is formally requested to contact the undersigned prior to issuance of the next Office action, in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. This request is being submitted under MPEP §713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

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